

DEPARTMENT OF STATE REVENUE

28930358.LOF

**LETTER OF FINDINGS NUMBER: 93-0358 CSET
Controlled Substance Excise Tax
For Tax Period: February 9, 1993**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Controlled Substance Excise Tax — Imposition

Authority: IC 6-7-3-5

Taxpayer protests the imposition of the controlled substance excise tax.

STATEMENT OF FACTS

Taxpayer was arrested on February 9, 1993 in Elkhart County, Indiana for possession of marijuana. On March 9, 1993 the Department of Revenue served the taxpayer with a Controlled Substance Excise Tax Assessment and Jeopardy Demand Notice. The assessment was based on 1,022.70 grams of marijuana resulting in a base tax of \$40,908.00 plus a one hundred percent penalty. Taxpayer protested this assessment. Additional relevant facts will be provided below, as necessary.

I. Controlled Substance Excise Tax — Imposition

DISCUSSION

Pursuant to IC 6-7-3-5:

The controlled substance excise tax is imposed on controlled substances that are:

- (1) delivered;
- (2) possessed; or
- (3) manufactured;

in Indiana in violation of IC 35-48-4 or 21 U.S.C. 841 through 21 U.S.C. 852. The tax does not apply to a controlled substance that is distributed, manufactured, or dispensed by a person registered under IC 35-48-3.

Taxpayer concedes he was in possession of the marijuana, and claims the marijuana was used for medicinal purposes. The taxpayer states his disagreement with the controlled substance excise tax.

Pursuant to IC 6-7-3-5, the controlled substance excise tax is imposed on the possession of controlled substances. The Department finds the tax is to be imposed if it does not fall within the provision exempting such possession. Taxpayer's possession is not expressly exempted by IC 6-7-3-5.

FINDING

Taxpayer's protest is denied.